

personalty cannot be seized and sold at law under a *fi. fa.*⁶² But the creditor, by issuing a *fi. fa.*, may acquire a priority in equity from the time his execution is placed in the Sheriff's hands, *Harris v. Alcock supra*. The creditor may clearly therefore pursue equitable interests *in 404 lands conveyed by a fraudulent grantor, and under the Code, Art. 16, sec. 35,⁶³ it would seem also equitable interests in personalty.⁶⁴

Who are creditors within the Statute.—With regard to the creditors "or others"⁶⁵ who may impeach such conveyances, the Statute has been liberally construed in giving persons, who are or might be injured by a fraudulent conveyance, the character of creditors under the Statute; a surety is a creditor of the co-obligor or co-sureties from the time the obligation is entered into; those interested in an official bond are creditors of the surety from the time the bond is executed by him; the guarantee of an assigned judgment is a creditor of the guarantor from the time the guaranty is given, and an accommodation note imposes on the maker a contingent liability to an indorsee for value, which becomes absolute on discounting the note; and claimants on such notes dated before a voluntary deed, though discounted subsequently, even after maturity, are considered prior creditors, *Williams v. Banks supra*. And so a person on whose behalf a covenant is entered into, which is contingent at the time the disposition impeached is entered into, as a wife claiming under a covenant to make a provision in case of her surviving, is sufficiently a creditor within the Statute, *Rider v. Kidder*, 10 Ves. Jun. 360; indeed it was broadly affirmed in argument by Sir S. Romilly in that case, that the Statute of Elizabeth reaches a debt depending on a contingency as much as a debt certain. So it has been held that a creditor under a voluntary *post-obit* bond, made to secure an annuity to a daughter-in-law, is as much entitled to the benefit of the Statute as any other creditor, *Adames v. Hallett*, 6 L. R. Eq. 468.

Husband and wife.—In *Feigley v. Feigley*, 7 Md. 537,⁶⁶ it was laid down that a wife was a creditor under the Statute, if made the victim of her husband's fraud, though his right to alienate his property at will is undisputed, even if he strips himself of all means of supporting her—if he do

⁶² This statement is applicable now only to equitable interests in chattels personal. See note 61 *supra*.

⁶³ Code 1911, Art. 16, sec. 47.

⁶⁴ See *Morton v. Graffin*, 68 Md. 563.

⁶⁵ The Statute embraces not only creditors technically such, but all others who have cause of action or suit, or any penalty or forfeiture, and embraces actions of slander, trespass and other torts. *Cooke v. Cooke*, 43 Md. 531; *Gebhart v. Merfeld*, 51 Md. 325; *Welde v. Scotten*, 59 Md. 72; *Spuck v. Logan*, 97 Md. 158. Cf. *Ex parte Mercer*, 17 Q. B. D. 290. As to who are subsisting creditors, see *Spuck v. Logan supra*.

⁶⁶ This case was affirmed in all respects in *Sanborn v. Lang*, 41 Md. 107 and *Duttera v. Babylon*, 83 Md. 544. But *quaere*, whether in such cases it is necessary to prove that the grantee participated in or had knowledge of the fraudulent intent of the grantor? *Rabbitt v. Gaither*, 67 Md. 112.